



JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

**STATEMENT OF POLICY BY THE LOUISIANA REAL ESTATE APPRAISERS
BOARD UPON ADOPTION OF REPLACEMENT RULE 31101**

On November 20, 2017, the Board published in the Louisiana Register the text of Rule 31101 as a replacement for the Board's prior rule requiring Appraisal Management Companies ("AMCs") to pay "customary and reasonable" fees for residential appraisals. The text of the replacement Rule 31101 is the same as the text of the prior rule. However, pursuant to Governor John Bel Edwards's Executive Order Number 17-16 (July 11, 2017), the process leading to adoption of the rule included additional supervisory steps by the Commissioner of Administration as well as the State Legislature; and the process for future enforcement of the Rule will be subject to supervision by an Administrative Law Judge of the Louisiana Division of Administrative Law.

Given these events and procedural changes, the Board believes it would assist all stakeholders (including lenders, AMCs, and appraisers) to explain how the Board interprets and will enforce Rule 31101.

1. Repeal of Prior Rule 31101, and Adoption of Replacement Rule 31101

The Governor's July 11 Executive Order required the Board to submit to the Commissioner of Administration (or his designee) for approval, rejection, or modification within 30 days any proposed regulation related to AMC compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A), with its rulemaking record, to ensure that the proposed regulation serves Louisiana's public policy to protect the integrity of residential mortgage appraisals by requiring that the fees paid by AMCs for an appraisal are to be customary and reasonable.

On July 17, 2017, the Board met and adopted a Resolution requiring the Executive Director to submit such a proposed rulemaking and regulation to Board by July 31. On July 31, the Board unanimously passed a motion to propose replacing prior Rule 31101 with a new rule having the same text as the prior rule. The Executive Director submitted the proposed rule and the history of promulgation of the prior rule to the Commissioner of Administration, who approved publication of the new Rule in a Notice of Intent in the Louisiana Register. That Notice of Intent to re-adopt Rule 31101 was published by the Louisiana Register on August 20, setting a September 8 return date for written comments and a potential public hearing for September 27. The Board received 77 written stakeholder comments, including letters from the Louisiana Bankers Association, the Louisiana Home Builders Association, Louisiana REALTORS, and the



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Appraisal Institute in support of the proposed rule; one letter from the Real Estate Valuation Advocacy Association (REVAA) expressing concerns with and suggesting amendments to the proposed rule; and short supportive comments via email from more than 70 individual appraisers and appraisal businesses in Louisiana. The Board held a public hearing to receive additional comments on September 27.

Following the hearing, the Board forwarded the proposed Rule along with the full record of promulgation of the Rule to the Commissioner of Administration and to the Louisiana Senate and House Commerce Committees having oversight responsibility over the activities of the Board in accordance with the Administrative Procedures Act.

On November 9, 2017, the Division of Administration issued a written decision approving the proposed re-adoption of Rule 31101. The November 9, 2017 letter determined that Rule 31101 “will further the public policy goals of the State of Louisiana by ensuring that real estate appraisers will be paid a customary and reasonable fee by AMCs. This, in turn, will strengthen the accuracy, integrity, and quality of real estate appraisals, which, among other benefits, can prevent a recurrence of the real estate bubble from the last decade.”

The Louisiana Senate and House Commerce Committee oversight subcommittees each informed the Board of their decision that it was unnecessary to hold hearings concerning the proposed Rule, and that the promulgation of the Rule should therefore proceed.

Upon its publication in the Louisiana Register on November 20, 2017, Rule 31101 has been adopted.

2. Board Guidance for Interpretation of Rule 31101

Louisiana’s Appraisal Management Company Licensing and Regulation Act (the “AMC Law”), particularly La. R.S. 37:3415, requires AMCs to compensate appraisers at a rate that is customary and reasonable for residential real estate appraisals being performed in the market area of the property being appraised, consistent with the requirements of 15 U.S.C. §1639e and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222. Rule 31101 implements those requirements.

The following sets forth the Board’s interpretation of Rule 31101. Inasmuch as the text of the Replacement Rule 31101 is the same as the prior Rule, the Board believes that this interpretation is consistent with how the prior rule was interpreted by the Board, and so this Guidance may also serve to answer any questions about how the Board has interpreted the prior Rule in practice.



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PLEASE NOTE: While the following represents the interpretation that will be applied by the Board, the text of Rule 31101 governs AMC compliance, and the Board and AMCs ultimately will be bound by the interpretation of Rule 31101 by an administrative law judge or a court of competent jurisdiction.

Rule 31101 provides four methods by which AMCs may comply with the AMC Law requirements. As in the Federal Reserve's Interim Final Regulations implementing the Dodd-Frank Act (TILA 129E), an AMC is entitled to a presumption of compliance—

- Under Rule paragraph (A)(1) where the AMC relies on evidence of recent rates established by objective third-party information, such as government fee schedules, academic studies, or independent private sector surveys (excluding fees for appraisal services paid by AMCs); or
- Under Rule paragraph (A)(3) and (B) of the Rule where the AMC can document that its fees were based on, at minimum, the six enumerated factors, applied to recent fees in the relevant geographic market.

A third method of compliance under Rule paragraph (A)(3) enables the AMC to demonstrate that its fees are “customary and reasonable” under all applicable facts and circumstances, including other factors in addition to the six factors listed in Rule paragraph (B)(1)-(6), applied to recent fees in the relevant geographic market.

Under each of these three methods, the Rule contemplates that the AMC may make necessary and appropriate adjustments to recent rates paid in the relevant geographic market to ensure that the amount of compensation is “reasonable” as well as customary. The relevant market area is identified by zip code, parish, or metropolitan area.

The Board had applied these three methods in investigations conducted under the prior Rule, and notes that AMCs had relied on at least one of each of these methods to comply with the “customary and reasonable” requirement. In such investigations, the AMC is required to state which of the above methods it employed to comply with Rule 31101 with respect to a particular fee, and to provide evidence showing how it applied the selected method.

The Rule provides that the Board, at its discretion, may establish a schedule of customary and reasonable fees as a fourth option for AMCs to comply. The Board had not established such a schedule under prior Rule 31101, and has no present intention to establish such a schedule under replacement Rule 31101.



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Statements by the Federal Reserve Board provide additional interpretive guidance as to customary and reasonable fees. For example, the introduction to the FRB final Interim Rules state that “the marketplace should be the primary determiner of the value of [residential] appraisal services, and hence the customary and reasonable rate of compensation for fee appraisers.” 75 Fed. Reg. 66554, 66569 (Oct. 28, 2010). The FRB further explains that, to reflect the marketplace in fees paid for particular appraisals, “recent rates for appraisal services in the relevant geographic market” (*i.e.*, “customary” fees) are to be adjusted “as necessary to account for factors in addition to geographic market that affect the level of compensation appropriate in a given transaction” (*i.e.*, “reasonable”). *Id.*; Supplement I to Part 1026, Official Interpretations, 12 C.F.R. 1026.42(f)(2)(i)(2) (2017). “Recent rates” are those paid for the same type of services within the preceding twelve (12) months in the geographic market.

3. Guidance for Enforcement of Rule 31101

The Board investigates compliance with the Rule based on documented complaints of offers or payments below what the complainant believes to be a customary and reasonable fee for the requested services in that market area, and may investigate or randomly audit compliance in the absence of a complaint.

The Board’s general policies with respect to enforcement are as follows:

- A. The Board’s primary goal is that AMCs comply with the AMC Law and Rule 31101.
- B. The Board strives to enforce the customary and reasonable fee requirement on a non-discriminatory basis.
- C. AMCs found in non-compliance will be required to submit an effective plan to come into compliance. This was the primary focus under prior Rule 31101, and will remain the principal objective under replacement Rule 31101.
- D. The Board’s policy has been to assess penalties where it is clear the AMC has not made reasonable efforts to comply with the Rule. Examples would include where an AMC cannot document use of any of the three methods to demonstrate that the fees it paid were customary and reasonable; or where an AMC fails to follow through with representations it had made in response to an enforcement action; or in the case of repeated violations.
- E. However, the customary and reasonable fee obligation has been part of Louisiana law since 2013. Going forward, AMCs should expect that “reasonable efforts” will no longer be considered sufficient, such that penalties for failure to comply with the law



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will become more common in addition to requirements for remedial action to achieve compliance.

Under the Executive Order, the Board's enforcement efforts henceforth will be supervised and reviewed by an independent Administrative Law Judge ("ALJ") appointed under a contract between the Board and the Division of Administrative Law effective July 1, 2017. Prior to initiating any enforcement action, the ALJ will review whether evidence submitted by the Board shows a likelihood of noncompliance, and whether the proposed action would serve Louisiana state policies to protect the integrity of mortgage appraisals. The ALJ also will review whether proposed informal resolutions, settlements, or dismissals of any approved enforcement action are consistent with those policies. The ALJ further will review the record of any hearing and any proposed relief in an enforcement action conducted by the Board, consistent with the standards of review set forth in the Louisiana Administrative Procedures Act and the aforementioned state policies, and will approve, reject, or modify the Board's recommended decision and proposed relief. The Board will adopt and implement the ALJ's determination. An AMC may appeal the decision to the 19th Judicial Circuit Court, as today.

4. Statement of Policies with Respect to Actions under Prior Rule 31101

The Board states below its policies with respect to any investigations or enforcement actions taken under prior Rule 31101.

- A. With the November 20, 2017 publication of replacement Rule 31101, prior Rule 31101 has been repealed. Prior Rule 31101 cannot and will not be the basis of any further enforcement action by the Board.
- B. As of November 20, 2017, there are no pending enforcement actions before the Board under either prior Rule 31101 or replacement Rule 31101.
- C. All actions under prior Rule 31101 have been terminated by the Board with no finding of violation, or have expired by their own terms, or have been vacated by the Board.
- D. No proposed fee or payment that occurred prior to November 20, 2017 will be the basis of, or admissible as evidence in, any enforcement action under replacement Rule 31101.
- E. The fact of any prior investigation or enforcement action against an AMC under prior Rule 31101 will not be admissible as evidence in any enforcement action under replacement Rule 31101.

5. Statement of Board Policy as to the SLU Survey



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As noted in Section 2 above, Rule 31101 provides three current methods by which AMCs can comply with the “customary and reasonable” fee obligation, and one of those methods relies on the use of objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. The Board neither requires nor prohibits AMC use of objective third-party information, and AMCs that use such information are not precluded from demonstrating, by reference to the six-factor analysis, why adjustments to particular findings in such studies or surveys would be “reasonable” for a particular transaction.

Since 2013, the Board has paid for an annual independent survey by Southeastern Louisiana University of fees paid by lenders for various types of residential appraisals in the relevant geographic markets of the State of Louisiana over the prior year. The Board’s intention in funding and making publicly available this SLU Survey was to assist AMC compliance with the law by providing information that might qualify as an objective academic study for purposes of the presumption under prior Rule 31101(A)(1), as well as the Dodd-Frank Act and the Federal Reserve Board Interim Final Rules. The Board posted the survey along with the notice: “This study is provided as a courtesy to all licensees; however, its use is not mandatory.”

Under prior Rule 31101, AMCs that used the SLU survey as permitted under the Dodd-Frank Act and prior Rule 31101 were entitled to the benefit of the (A)(1) presumption. In some investigations, AMCs voluntarily agreed to bring themselves into compliance under the presumption using the SLU Survey, for a limited time not to exceed one year. Because use of the SLU Survey prior to the investigation would have entitled that AMC to the benefit of the presumption, the Board was willing to accept that representation in resolution of the investigation as well.

Some have questioned the Board’s use of the SLU Survey. A complaint filed against the Board by the Federal Trade Commission suggests that the Board’s effort to assist AMCs’ compliance instead was an attempt to fix, maintain, or stabilize prices for AMC payments for residential appraisal services. The Board categorically rejects that characterization; but such aspersions and allegations have impeded the Board’s efforts to fulfill its regulatory responsibilities under the AMC Act. The Board remains mindful that Governor Edwards issued his Executive Order in large measure to obviate federal antitrust law questions that “may prevent the LREAB from faithfully executing mandates under the Dodd-Frank Act and Louisiana law.”

The Board therefore has decided not to fund the SLU Survey in the future, and will remove the survey from the Board’s website. Use by any AMC of any survey, including the SLU Survey, under replacement Rule 31101 will continue to be subject to the conditions for use of any objective



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third-party information that qualifies for the presumption under the federal rules and Rule 31101. Please note that the most recent SLU Survey studied fees paid in 2016 and, consistent with the requirement to study "recent rates," the SLU Survey no longer will meet those conditions after December 31, 2017. Per Section 3 above, in connection with an enforcement action (including informal resolutions, settlements, or hearings), any AMC's use of objective third-party information, including the SLU Survey, will be subject to ALJ review.